

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

ORDER

Criminal No. 95-24 (MJD)

Alexander Faulkner,

Defendant.

This matter is before the Court upon Defendant's motion to vacate a void judgment pursuant to Fed. R. Civ. P. 60(b). It is Defendant's position that his judgment of conviction is void because this Court lacked subject matter jurisdiction because the indictment was not based on valid law. Specifically, Defendant argues that the statutes upon which his conviction is based do not have enactment clauses.

A similar argument was rejected by this Court in United States v. Ramanauskas, 2005 WL 189708 *2 and n.1 (D. Minn. 2005) (finding the U.S. Constitution does not require that codification of statutes include enacting clauses).

Nonetheless, the Court finds that this argument is one that could have been raised in his first § 2255 petition, which was filed in January 1998, and denied by

Order dated October 19, 1998. The instant motion will thus be treated as a successive § 2255 motion for which the Defendant has not obtained the proper authorization from the Eighth Circuit Court of Appeals. Accordingly, this Court lacks jurisdiction to consider Defendant's motion. Boyd v. United States, 304 F.3d 813, 814 (8th Cir. 2004) (If Rule 60(b) motion is actually a successive habeas petition, the court should dismiss the motion for failure to obtain authorization of the court of appeals).

IT IS HEREBY ORDERED THAT Defendant's Motion to Void Judgment [Docket No. 675] is DENIED.

Date: December 21, 2005

s/ Michael J. Davis
Michael J. Davis
United States District Court